

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 3, 2021

CASE: 2020-00364R

Citation: Chai v. Toronto Standard Condominium Corporation No. 2431, 2021 ONCAT 116

Order under section 1.44 of the *Condominium Act, 1998*.

Member: Maureen Carter-Whitney, Member

The Applicant,

Somkith Chai
Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 2431
Represented by Bharat Kapoor, Counsel

Hearing: Written Online Hearing – April 15, 2021 to November 22, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] This case arises from two requests for records made by the Applicant, Somkith Chai, who is a unit owner in the Respondent, Toronto Standard Condominium Corporation No. 2431 (“TSCC 2431”). Mr. Chai requested minutes of Board of Directors’ (“board”) meetings held between November 20, 2018, and August 6, 2020. Mr. Chai has made previous records requests that were addressed in Condominium Authority Tribunal (CAT) case number 2019-00067R.
- [2] Although Mr. Chai received responses from TSCC 2431, he submits that some records are missing, and others were not provided according to the requirements of the *Condominium Act, 1998* (the “Act”) and Ontario Regulation 48/01 (the “Regulation”). He also questions the adequacy of the records received. TSCC 2431 takes the position that all the requested records have been provided and that they are adequate and accurate.
- [3] For the reasons below, I find that Mr. Chai was entitled to the requested records, and that they have been provided to him. However, an excessive amount of information was redacted from the portion of the August 14, 2019, minutes (Exhibit

12) entitled “FIRE DAMAGE & CLAIM” and I order TSCC 2431 to provide Mr. Chai with a revised version of the August 14, 2019, minutes, redacted in a manner similar to the redaction of an item with the same title in Exhibit 19, consistent with the requirements of the Act. Finally, I order TSCC 2431 to pay costs to Mr. Chai in the amount of \$200.

B. ISSUES & ANALYSIS

Issue 1: Is Mr. Chai entitled to receive copies of the requested records?

[4] Subsection 55(3) of the Act sets out an owner’s entitlement to examine or obtain copies of a corporation’s records:

“The corporation shall permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing, to examine or obtain copies of the records of the corporation in accordance with the regulations, except those records described in subsection (4).”

The exceptions set out in subsection 55(4) of the Act include records related to employees, to actual or contemplated litigation, and to specific units or owners, as well as the following records prescribed in section 13.11 of the Regulation relating to: certain methods of electronic communication; legal reports or opinions regarding specific units or owners, and related communications; and any portion of a ballot or proxy form that identifies specific units or owners unless a by-law of the corporation provides otherwise.

[5] Mr. Chai has made two requests for records. The first (“Request A”) requested board meeting minutes from November 20, 2018, to November 19, 2019. The second (“Request B”) requested board minutes from August 5, 2019, to August 6, 2020. Although Mr. Chai initially thought that the Respondent had provided all of the records requested under Request A, after receiving records requested in Request B he came to believe that this was not the case. He also states that some of what the board terms its “in-camera” meeting minutes, requested under Request B, were not provided. He also states that some minutes were not properly approved and signed.

Provision of in-camera minutes

[6] Mr. Chai submits that he has still not received the corresponding in-camera minutes for several board meetings. He does not accept TSCC 2431’s evidence that there were no further minutes, and believes it is likely that there are additional in-camera minutes that were not provided to him. Mr. Chai submits that the board has not been consistent about identifying when there are in-camera minutes,

making it difficult for an owner to know when they exist. Since most regular board meeting minutes have corresponding in-camera minutes, he believes that all board meetings may have them.

- [7] TSCC 2431 provided affidavit evidence from Carol Wang, an employee of First Service Residential (“FSR”), who has been TSCC 2431’s on-site condominium manager since December 2019. Ms. Wang testified that all in-camera minutes relating to the board meetings subject to Requests A and B have now been redacted and provided to Mr. Chai. She confirmed that no in-camera minutes exist for the following board meetings: December 4, 2018; May 15, 2019; July 10, 2019; and June 29, 2020. Specifically, Ms. Wang testified that she checked the files where the records were saved, checked with the board, and reviewed old emails. Therefore, TSCC 2431 submits that all requested records have been provided to Mr. Chai, and that it cannot provide minutes that do not exist. Regarding redactions, Ms. Wang testified in her witness statement that all in-camera minutes were provided to Mr. Chai after proper redactions were made. She also stated that, since she became the manager of TSCC 2431, all records are saved and stored in an orderly fashion.
- [8] Mr. Chai raised the question of whether these records may exist. In addition to his credibility concerns regarding Ms. Wang’s evidence, Mr. Chai identified wording in the minutes of board meetings for which no in-camera minutes were provided, which he says indicate the existence of in-camera minutes. For example, regarding the approval of “previous minutes” of May 15, 2019, the July 10, 2019, minutes state that the board would “sign both minutes at the next board meeting.” Mr. Chai also stated that he was provided with an unamended, unsigned version of the May 15, 2019, minutes, and he believes that the board made errors in how it kept the records for this date. Although Ms. Wang noted that she was not the condominium manager at that time, she responded in cross-examination that “both minutes” referred to the regular board meeting minutes of May 15 and July 10.
- [9] Regarding the June 29, 2020, minutes, Mr. Chai noted that the previous and subsequent board meeting minutes referred to items that were not discussed in the June 29, 2020 minutes, leading him to believe that they were mentioned in missing in-camera minutes for that date. Under cross-examination, Ms. Wang maintained that there were no in-camera minutes for the four board meetings in dispute.
- [10] Mr. Chai asked numerous questions in cross examination to which the Respondent objected and there was some reluctance or confusion on the part of Ms. Wang in responding. However, I found Ms. Wang’s answers to be consistent

regarding the lack of in-camera minutes for the dates at issue. There is no evidence to suggest that she is not telling the truth about whether in-camera minutes exist for these dates, based on her knowledge of the records. Therefore, I give significant weight to her testimony in this regard.

[11] Although Ms. Wang was not involved in the management of TSCC 2431 at the time of some of the disputed board meetings, she is in the best position to review its records as its current condominium manager, and I accept her evidence that no in-camera minutes exist for four board meetings in question. The Tribunal cannot order a condominium corporation to produce records that do not exist. Mr. Chai has demonstrated that there are some problems with the records, and I deal further with the adequacy of the records below. However, I find that there is not sufficient evidence to establish, on a balance of probabilities, that in-camera minutes exist for the board meetings conducted on December 4, 2018, May 15, 2019, July 10, 2019, and June 29, 2020. As a result, I will not order that they be produced.

Approval and signing of minutes

[12] Mr. Chai submits that some of the minutes he received were not properly approved and signed, and that there was a delay of several months in approving some of the minutes. He identifies the following minutes he received that were not signed: the regular board meeting minutes for May 15, 2019, and September 9, 2019, and the in-camera minutes for March 27, 2019, and Aug 14, 2019. He seeks to receive the signed versions of these minutes.

[13] Ms. Wang stated that board meeting minutes are taken by the minute taker, who prepares the draft minutes after the meeting and provides a copy to the condominium manager, who then emails a copy to the board for their review and approval. She also stated that the minutes are usually approved at the next board meeting. TSCC 2431 submits that there is no legal requirement to approve minutes of a meeting at a subsequent one. TSCC 2431 argues that a delay in approving minutes does not invalidate them.

[14] I have reviewed the minutes in evidence and confirmed the board's practice of approving minutes at a subsequent board meeting, often the next month. Although approval is sometimes delayed until a later board meeting, the minutes indicate that previous minutes are eventually approved. Also, in most cases the minutes in evidence were signed, either on the date of the next meeting or at a later meeting. I note that there is no requirement in the Act or associated regulations that minutes

of the board must be signed, although it is the best practice that they be signed.¹ I find that the failure to sign or delay in signing minutes is not a basis on which to conclude that these records are not adequate. Therefore, I will not order that the Respondent must sign the requested minutes or make a finding that the provision of unsigned minutes constitutes a failure to provide the requested records.

Conclusion on Issue 1

[15] I find that Mr. Chai was entitled to the requested board meeting minutes, and that all records have now been provided to him.

Issue 2: Were the records excessively redacted?

[16] Mr. Chai submits that certain in-camera minutes were overly redacted. He refers to his earlier CAT case in which there were minutes where whole paragraphs were initially redacted and, after the Tribunal ordered that the redactions be reduced, he received a revised record in which only one word required redaction. He asks that the excessive redactions in this case be addressed.

[17] Ms. Wang gave evidence that record requests are handled by a special department at FSR that reviews and redacts minutes, if required.

[18] I have reviewed the redactions in the minutes provided to Mr. Chai in relation to Requests A and B and find that most of the redactions are appropriate in that only the unit numbers and owners' names were redacted from the minutes. However, I noted two exceptions where it appears, based on my review of the document, that an excessive amount of information may have been redacted. In the board meeting minutes of August 14, 2019 (Exhibit 12), the text of an entire item entitled "FIRE DAMAGE & CLAIM" has been redacted rather than just the unit and owner information. A similarly excessive redaction was made in relation to an item with the same title in the board meeting minutes of September 25, 2019 (Exhibit 15), but a second version of these minutes was provided to Mr. Chai with less text redacted so that it provided some information about the fire damage and claim (Exhibit 19).

[19] Based on my review, I will order TSCC 2431 to review this redaction and provide Mr. Chai with a revised version of the August 14, 2019, minutes, consistent with the requirements of the Act and redacted in a manner similar to Exhibit 19.

[20] Mr. Chai highlights a particular concern that too much information was redacted in

¹ *Wei v. Toronto Standard Condominium Corporation No. 2297*, 2021 ONCAT 8

the July 10, 2019, board meeting minutes (Exhibit 10) in an item titled “Roof Terrace Repair-Vienna Roofing”, which he believes may relate to his own unit. When he asked Ms. Wang whether she could confirm whether the redacted text referred to his unit, she responded by saying “no”. Mr. Chai submits that he interpreted this as Ms. Wang stating that she cannot confirm this. He submits that, if this item relates to his unit, the unit number should not have been redacted.

[21] I have reviewed Ms. Wang’s response to Mr. Chai’s cross-examination questions. I interpret her negative response to mean that this item did not refer to his unit, and not to mean that she could not confirm whether it referred to his unit. Ms. Wang, as the condominium manager, stated that she stores the minutes in a shared file system and can access the unredacted records. She has done so while reviewing records and revisiting the redactions to be provided to Mr. Chai throughout this process. She is clearly able to confirm the information to which the redacted text referred. I find that her evidence on this point is credible and reliable.

Issue 3: Are the records that Mr. Chai received adequate?

[22] Mr. Chai raised many concerns about the adequacy of the records he received. I will first review the jurisprudence on this issue and then will address each record in light of that jurisprudence.

[23] Subsection 55(1) of the Act requires that a condominium corporation keep adequate records. Court and CAT decisions have considered the meaning of “adequate” in this context. In *McKay v. Waterloo North Condominium Corp. No. 23*, the court stated that:

The Act obliges the corporation to keep adequate records. One is impelled to ask – adequate for what? An examination of the Act provides some answers. The objects of the corporation are to manage the property and any assets of the corporation (s. 12(1)). It has a duty to control, manage and administer the common elements and the assets of the corporation (s.12(2)). It has a duty to effect compliance by the owners with the Act, the declaration, the by-laws and the rules (s. 12(3)). Each owner enjoys the correlative right to the performance of any duty of the corporation specified by the Act, the declaration, the by-laws and the rules. The records of the corporation must be adequate, therefore, to permit it to fulfil its duties and obligations.²

[24] In a recent case dealing with adequacy,³ the CAT determined that accuracy is a component of adequacy in respect of condominium records, and that the use of

² *McKay v. Waterloo North Condominium Corp. No. 23*, 1992 CanLII 7501 (ON SC)

³ *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, 2020 ONCAT 33

the word “adequate” in the legislation suggests tolerance for a degree of imperfection. The Tribunal stated that the question is how much inaccuracy may be tolerated before a record becomes inadequate to permit the condominium corporation to fulfill its duties and obligations and noted that board meeting minutes serve as a historical record to ensure that the board’s actions are transparent to the unit owners, and to help owners protect their interest in how the corporation is managed. As a result, the Tribunal in that case determined that a reasonably high standard and expectation for accuracy should be applied to board meeting minutes.

[25] In *Mawji v. York Condominium Corporation No. 415*, the CAT stated that an assessment of the adequacy of the board minutes must include a consideration of whether the minutes contain a record of all the business transacted by the board. This decision also summarized the previous CAT decisions about adequacy of records as follows:

These decisions establish that an adequate record of a board meeting is a document with sufficient detail to allow the owners to understand what is going on in their corporation, how decisions are being made, when the decisions are made and what the financial basis is for the decisions.⁴

Amendments of minutes

[26] Mr. Chai submits that TSCC 2431 has not properly indicated where minutes have been amended and believes he may not have been provided with the amended versions of the May 15, 2019, July 10, 2019, and July 27, 2020 board meeting minutes and wishes to receive copies of properly amended records. He indicates several examples of where minutes were not amended to correct errors.

[27] I note that Ms. Wang gave evidence concerning the process for amending minutes, noting that: where minutes are amended by hand, that is visible on the minutes; approved minutes show whether they were approved as presented or as amended; and any amendments are made by the minute-taker after being instructed to do so by the board. She also stated that only signed final versions of the minutes are saved in the shared file system, and that the versions of minutes provided to Mr. Chai and signed by the directors are the final and approved versions.

[28] I have reviewed the examples to which Mr. Chai referred regarding his allegations of improperly amended records and his request for amended versions of the May

⁴ *Mawji v. York Condominium Corporation No. 415*, 2021 ONCAT 72

15, 2019, July 10, 2019, and July 27, 2020, minutes. However, I agree with and adopt the reasoning in the Tribunal's decision for Mr. Chai's previous CAT proceeding that, while it would be a best practice to produce a final amended version of minutes, it is up to the corporation to determine how the minutes are amended and it is not for the CAT to order that it make revisions retroactively.⁵ The corrections that Mr. Chai seeks are relatively minor and not substantial and I accept that the board has determined that the minutes are complete and final for its purposes. Regarding Mr. Chai's concerns about Ms. Wang's credibility, I note that Ms. Wang did not initially answer all of Mr. Chai's questions in a straightforward manner and he was required to ask follow-up questions, but she ultimately did acknowledge issues with at least some of the amendments. As with my earlier analysis of Ms. Wang's evidence, I find no evidence to suggest that she is not telling the truth regarding the amendments and I accept her testimony.

Errors and inconsistencies in minutes

[29] Mr. Chai submits that there are typographical and other wording errors in the board minutes, as well as inaccuracies in dates and other details. He asserts that the minutes should be amended to ensure that accurate minutes are kept. Mr. Chai asks the Tribunal to decide if the records are accurate or require a correction. If so, he wants corrections to be made and provided to him. Mr. Chai further submits that the board minutes sometimes lack sufficient detail to understand what is being discussed and notes that some action items included in the minutes are never addressed again in subsequent minutes. He also submits that the minutes are confusing because they are not consistent in using the terms "new business" and "other business"; for example, some items that were included in the minutes for several months were then recorded as "new business".

[30] TSCC 2431 argues that any errors were not intentional or made in bad faith, noting that condominium boards of directors must act reasonably and in good faith but are not held to a standard of perfection.⁶ TSCC 2431 also submits that the terms "new business" and "other business" are used interchangeably and any item that was not originally on the agenda for a meeting is usually discussed during "other business" or "new business". TSCC 2431 asserts that this is a common practice across the condominium industry.

[31] As discussed above, the Act does not require perfection in board minutes.⁷ While

⁵ *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2019 ONCAT 45

⁶ *Turner v. Peel Condominium Corporation No. 42*, 2020 ONSC 738

⁷ *Rahman v. Peel Standard Condominium Corporation No. 779*, 2021 ONCAT 32

the CAT does have the authority and jurisdiction to order that an inadequacy in a record be correct,⁸ I have reviewed the errors and inconsistencies highlighted by Mr. Chai and find that they do not reach a threshold that requires me to make such an order. For the most part, they are minor errors. While potentially confusing, I accept that terms such as “new business” and “other business” may at times be used interchangeably. Overall, I find that the minutes in evidence, while not perfect, do provide sufficient detail to understand what is being discussed at the board meetings.

Redaction process

- [32] Mr. Chai demonstrated in his evidence that the technical way that FSR redacted the minutes was insecure and that one could easily determine what the redacted information was. He asserts that FSR is not capable of properly redacting the board minutes and that TSCC 2431 should retain a different service for future minute-taking and redaction services. Mr. Chai also submits that TSCC 2431 has not been consistent in determining what information should be included in in-camera minutes as opposed to the regular meeting minutes, and that the board should conduct a proper review to ensure that information is only included in in-camera minutes where appropriate.
- [33] TSCC 2431 submits that it complied with the Act and redacted unit owner-specific information before providing the minutes to Mr. Chai, but he acted imprudently and in bad faith by decoding the redacted information. Regarding the difference between regular and in-camera minutes, TSCC 2431 submits that, as a general practice, any board discussion with respect to specific units forms part of the in-camera minutes.
- [34] Having reviewed the evidence and submissions, I find that the technical process by which redactions are made is not adequate to protect the private information that is supposed to be redacted. Mr. Chai’s evidence persuasively demonstrates that it is possible to easily manipulate the records to reveal the redacted information. Regarding TSCC2431’s submission that Mr. Chai acted imprudently in uncovering this information, I make no such finding. Instead, I find that Mr. Chai took steps to determine whether it was possible to review the redacted information so that he would be able to illustrate that the technical procedure used to redact private information was not secure. In doing so, he did not act in bad faith or for any improper purpose.

⁸ *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, 2020 ONCAT 33

- [35] Regarding the board discussions that are included in regular as opposed to in-camera minutes, I have reviewed the minutes and find that the regular board minutes frequently include references to individual units and owners which must be redacted before those minutes are made public. Similarly, in-camera minutes also include references to specific units and owners. Ideally, if the board was sufficiently careful to ensure that no topics that should be redacted are discussed in their regular meetings, and that such topics are strictly reserved solely for their in-camera sessions, there should be no need to redact the regular meeting minutes and only the in-camera minutes would require redaction.
- [36] I note Ms. Wang's evidence that record requests are handled by a special department at FSR that reviews and redacts minutes, if required; this is not done by the board or the minute-taker. It would be best practice for the board to instruct those responsible for redactions, whether FSR or another entity or individual, to modify its practices going forward. All information subject to redaction should be redacted in a manner that ensures that it is private and not subject to being uncovered through technical means. Furthermore, the board should provide clear guidelines for what types of discussions are to be included in regular versus in-camera minutes and ensure that all private matters are captured in the in-camera minutes.
- [37] I note that Mr. Chai provided video files showing how he was able to uncover the redacted information. He submitted these files after the period for disclosing documents had closed and he did not seek to have them admitted as evidence. I did not need to rely on the video files because Mr. Chai also provided testimony about how he uncovered the information. Therefore, I did not enter the video files into evidence.

Board decisions made by email

- [38] Mr. Chai raises concerns that the board has conducted business and approved decisions through email communications outside of meetings. He bases this on Ms. Wang's response to a cross-examination question in which she stated that there could be email communication on projects or approvals other than at board meetings. He submits that boards are prohibited from transacting business of the corporation except at a meeting of directors. TSCC 2431 did not respond to Mr. Chai's submissions on this point.
- [39] I note that Ms. Wang testified, in response to cross-examination, that board decisions are sometimes made over emails and ratified at the next board meeting.
- [40] Regarding Mr. Chai's concerns, I note that section 32 of the Act provides that the

board of a corporation shall not transact any business of the corporation except at a meeting of directors at which a quorum of the board is present. Ms. Wang testified, in response to cross-examination, that board decisions are sometimes made over emails and ratified at the next board meeting. Whether or not the practices of the Respondent's board in this regard are appropriate is not within the jurisdiction of the Tribunal to determine at this time, so I will not make any finding in this regard. This issue could, however, speak to the adequacy of the minutes as records of the corporation if, as a result of it, there are decisions of the board relating to the business of the corporation that are not contained in the minutes. The evidence does not demonstrate that this is the case.

Issue 4: Should TSCC 2431 be required to pay a penalty for failure to provide Mr. Chai with the records requested without reasonable excuse and, if so, in what amount?

[41] Under subparagraph 1.44(1)6 of the Act, the Tribunal may order a condominium corporation to pay a penalty that the Tribunal considers appropriate if the Tribunal concludes that the corporation has, without reasonable excuse, refused to permit an entitled person to examine or obtain copies of a record.

[42] Mr. Chai notes that, in his previous CAT case, he received a \$200 penalty because several records were not received until mediation, and that this penalty was intended to deter future similar action by TSCC 2431. He submits that there should be a penalty for all missing minutes in the amount of \$200 or more, and for over-redaction. TSCC 2431 submits that it did not refuse to provide Mr. Chai with access to the requested records, and all were provided to him except for “missing” records which do not exist.

[43] As set out above, I have found that TSCC 2431 did not refuse to provide the records. Therefore, I find that TSCC 2431 has not refused to provide a record without a reasonable excuse, and consideration of a penalty is not warranted in this case.

Issue 5: Should Mr. Chai be awarded costs and, if so, in what amount?

[44] Subparagraph 1.44(1)4 of the Act provides that the Tribunal may make an order directing a party to the proceeding to pay the costs of another party to the proceeding. The CAT Rules of Practice address costs in Rules 45 and 46, which state:

45.1 The CAT may order a User to pay to another User or the CAT any reasonable expenses or other costs related to the use of the CAT, including:

- (a) any fees paid to the CAT by the other User;
- (b) another User's expenses or other costs that were directly related to this other User's participation in the Case; and,
- (c) costs that were directly related to a User's behaviour during the Case that was unreasonable, for an improper purpose, or that caused an unreasonable delay.

45.2 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful User will be required to pay the successful User's CAT fees and reasonable dispute-related expenses, unless the CAT member decides otherwise. This does not include legal fees.

46.1 The CAT will not order a User to pay to another User any fees charged by that User's lawyer or paralegal, unless there are exceptional reasons to do so.

- [45] Mr. Chai cites various delays that occurred during the proceedings. Mr. Chai also requests his \$200 in filing fees as costs, and requests that he not be required as an owner to pay his portion of the legal fees and other costs incurred by the Respondent in this matter. TSCC 2431 submits that it complied with its obligations pursuant to the Act, Mr. Chai received all requested records, and no costs should be awarded to him.
- [46] Mr. Chai was partially successful in this application, and I award him \$200 to compensate for his CAT fees for this matter.
- [47] Regarding his request for further costs, I note that initiating a CAT case will necessarily require time from all participants in the process. Therefore, I will not order costs for the time Mr. Chai spent engaged in the proceeding. There were delays during the proceeding, which is not infrequent in CAT proceedings. Some of the delay resulted from Ms. Wang not responding fully to the questions posed by Mr. Chai, even after I had dealt with objections and ordered her to answer those questions. However, the lengthy amount of time required overall to deal with cross-examination was also due to extensive number of detailed cross-examination questions presented to Ms. Wang. Having considered the circumstances, I find that this is not an appropriate case in which to require TSCC 2431 to pay costs beyond the \$200 for Mr. Chai's CAT fees.
- [48] To ensure that Mr. Chai does not pay any portion of the costs award against TSCC 2431, he shall be given a credit towards the common expenses attributable to his unit in the amount equivalent to his unit's proportionate share of the costs. However, I find there is no basis in the Rules to grant his request that he not pay his portion of the legal fees and other costs incurred by the Respondent in this

case.

C. ORDER

[49] The Tribunal orders that:

1. Within 30 days of the date of this order, TSCC 2431 will provide Mr. Chai with a revised version of the August 14, 2019 minutes, redacted in a manner similar to the redaction of an item with the same title in Exhibit 19, consistent with the requirements of the Act.
2. Within 30 days of the date of this order, TSCC 2431 will pay the amount of \$200 in costs to Mr. Chai.
3. To ensure that Mr. Chai does not pay any portion of the costs award against TSCC 2431, he shall be given a credit towards the common expenses attributable to his unit in the amount equivalent to his unit's proportionate share of the costs.

Maureen Carter-Whitney
Member, Condominium Authority Tribunal

Released on: December 3, 2021